



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

March 27, 2003

Mr. Jerry Bruce Cain  
Assistant City Attorney  
City of Laredo  
P.O. Box 579  
Laredo, Texas 78042-0579

OR2003-2096

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178586.

The City of Laredo (the "City") received a request for the following two categories of information:

1. A copy of the proposal submitted by National Reimbursement Services in response to Request for Proposal ("RFP") number FY03-025.
2. Copies of the evaluation committee's documentation pertaining to RFP number FY03-025.

You assert the requested information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have reviewed the information you submitted and we have considered the exceptions you claim.

Section 552.104 states information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. Gov't Code § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open

Records Decision No. 541 at 4 (1990). This office has long held that section 552.104 does not except information relating to competitive bidding situations once a contract is in effect. *See, e.g.*, Open Records Decision Nos. 541 (1990), 514 (1988), 306 (1982), 184 (1978), 75 (1975).

In this case, you inform us the City has not yet awarded the contract associated with RFP number FY03-025. Additionally, you explain because the City has concerns about the legality of awarding contingent fee contracts, the City will likely reject all proposals and issue a new RFP for emergency medical service ambulance services. Further, you state disclosure of the requested RFP would give the requestor an advantage in the event the City issues a new RFP. Based on these arguments and our review of the submitted information identified as "Request #1," we conclude the City may withhold the proposal submitted by National Reimbursement Services under section 552.104 until the City awards and executes a contract for emergency medical service ambulance services.

Next, we note the information identified as "Request #2" contains documents subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, the following:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 [.]

Gov't Code § 552.022(a)(1). Three documents in "Request #2" constitute completed evaluations for purposes of section 552.022(a)(1). Therefore, the City may withhold this information only if it is excepted from disclosure under section 552.108 of the Government Code or is confidential under other law. The only exception you raise for these evaluations is section 552.111 of the Government Code. Section 552.111, a discretionary exception, is not other law under which information is made confidential. *See* Open Records Decision No. 663 (1999) (governmental body may waive section 552.111). Therefore, the City must release the submitted completed evaluations, which we have marked, pursuant to section 552.022(a)(1).

With respect to the remaining document in the information labeled "Request #2," we address your assertion of section 552.111, which excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department*

*of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision 615 at 5-6 (1993). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; Open Records Decision No. 615 at 4-5 (1993). After reviewing the remaining document, we find it reflects the policymaking process of the City with respect to issues regarding RFP FY03-025. Accordingly, the City may withhold the document we have marked from the requestor under section 552.111 of the Government Code.

In summary, the City may withhold all of the information labeled "Request #1" under section 552.104 of the Government Code. With respect to the information labeled "Request #2," the City must release the documents we have marked under section 552.022(a)(1). The City may withhold the remaining document under section 552.111 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

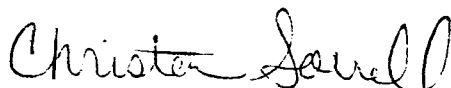
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 178586

Enc: Submitted documents

c: Mr. Scott Fothergill  
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(w/o enclosures)